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AUG 01 2007

**OFFICE OF PETITIONS**

In re Application of  
Patrick W. Breslin et al.  
Application No. 09/884,706  
Filed: June 19, 2001  
Attorney Docket No.: 12521-009

**ON PETITION**

This is a decision on the petition filed April 13, 2007 to withdraw the holding of abandonment, under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

An amendment and three month extension of time were filed in response to a Final Office Action mailed May 12, 2006. In response thereof, an Advisory Action noted that the response filed November 13, 2006 did not place the application in condition for allowance. Thus, since the extendable period for reply had lapsed, the application became abandoned and a Notice of Abandonment was mailed February 14, 2007.

Petitioner argues that the Final Office Action noted in the summary that Claim 6 was objected to but on Page 4 of the action noted that Claim 6 was allowed and therefore because of the ambiguity, the response filed November 13, 2006 was a complete and proper reply and that the holding of abandonment should be withdrawn. Petitioner's arguments have been considered but they are not persuasive.

Petitioners are advised that if an Office communication is mailed and that in the absence of that communication being withdrawn by the USPTO, then by law a complete and proper response is required within the time period set out in the Office communication received. The failure to file a complete and proper response causes the application to become abandoned, even if that communication was sent in error or petitioners believed there to be an error.

If some ambiguity existed as to the status of the claims, it was incumbent upon the petitioner to have it clarified prior to filing a response. Petitioner could have easily contacted the Examiner to determine the status of Claim 6 prior to the expiration of the period for response.

This application properly became abandoned November 14, 2006 for failure to file a complete and proper response to the Final Office Action. Therefore, the Notice of Abandonment mailed February 14, 2006 was appropriate.

In view thereof, the holding of abandonment will not be withdrawn.

## ALTERNATIVE VENUES

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(a)<sup>1</sup> or 37 CFR 1.137(b),<sup>2</sup> which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

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<sup>1</sup>A grantable petition under 37 CFR 1.137(a) must be accompanied by:

- (1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(l);
- (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

<sup>2</sup>Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

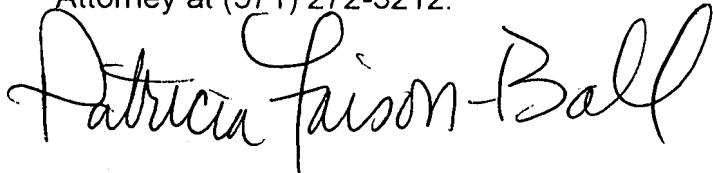
The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



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